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FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of)
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Interconnection Between Local)
Exchange Carriers and Commercial)
Mobile Radio Service Providers)
_____)

CC Docket No. 95-185

To: The Commission

COMMENTS OF NEW PAR

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SUMMARY

New Par concurs with the Commission's tentative conclusion to adopt "bill and keep" as an interim interconnection rate policy for end office switching and local termination. New Par also urges the adoption of bill and keep as the Commission's long term policy.

Bill and keep is consistent with the Telecommunications Act of 1996 (the "1996 Act") and the interconnection pricing principles articulated in the Commission's *Notice of Proposed Rulemaking* ("*NPRM*"). First, bill and keep prevents local exchange carriers ("LECs") from overcharging commercial mobile radio service ("CMRS") providers for interconnection and denying them mutual compensation. Second, bill and keep reasonably approximates the LECs' long run incremental cost ("LRIC") of providing interconnection to CMRS providers during both LEC peak and off-peak periods. Third, bill and keep reduces the administrative burden on LECs and CMRS providers by eliminating the need for lengthy negotiations, detailed reporting requirements, and interconnection billing. Thus, bill and keep facilitates the development of CMRS as a viable competitor to landline local exchange service.

For dedicated transport, tandem switching, and common transport between CMRS networks and LEC end offices, the Commission should mandate interconnection rates based on the LRIC of such interconnection. The Commission can require LECs to demonstrate the LRIC of providing interconnection without violating

the 1996 Act, which prohibits the Commission and State commissions from conducting lengthy proceedings to determine with particularity certain costs associated with providing interconnection services. In contrast, methodologies that attempt to identify the fully distributed costs of interconnection contravene these proscriptions of the 1996 Act.

In order to ensure that CMRS providers do not pay more than LRIC-based rates, the Commission should provide for geographic and time-of-day deaveraging of interconnection rates. The Commission also should establish a ceiling on the interconnection rates charged to CMRS providers that is equal to the lowest interconnection rate offered to a competitive access provider or new entrant LEC (or where there is no such entity, a rate equal to the rate charged to other LECs on the date the *NPRM* was released). Moreover, all LEC interconnection arrangements should be made publicly available and CMRS providers should be allowed to install non-LEC dedicated facilities without being penalized by the LEC.

With respect to both interstate and intrastate interexchange traffic that originates or terminates on CMRS networks, New Par supports the Commission's tentative conclusion that CMRS providers, rather than LECs, should be entitled to recover access charges directly from interexchange carriers.

Finally, New Par supports the Commission's tentative conclusion that it may regulate both interstate and intrastate LEC-CMRS interconnection rates and submits that the 1996 Act clarifies any possible ambiguity on this question.

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New Par, by its attorneys, hereby submits these comments in response to the Federal Communications Commission's (the "Commission") *Notice of Proposed Rulemaking* ("NPRM")¹ and *Order and Supplemental Notice of Proposed Rulemaking* ("Supplemental NPRM")² in the above-captioned proceeding.

¹ Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers and Equal Access and Interconnection Obligations Pertaining to Commercial Mobile Radio Service Providers, *Notice of Proposed Rulemaking*, CC Dkt. Nos. 95-185 and 95-54, FCC 95-505 (Released Jan. 11, 1996) ("NPRM").

² Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers and Equal Access and Interconnection Obligations Pertaining to Commercial Mobile Radio Service Providers, *Order and Supplemental Notice of Proposed Rulemaking*, CC Dkt. Nos. 95-185 and 95-54, FCC 96-61 (Released Feb. 16, 1996) (extending the comment period and seeking comment on the effect of the Telecommunications Act of 1996 on this proceeding).

**New Par
Comments in CC Dkt. No. 95-185
Filed March 4, 1996**

I. GENERAL COMMENTS

New Par, through partnerships or subsidiaries, provides facilities-based cellular service in 24 Metropolitan Statistical Areas ("MSAs") and Rural Service Areas ("RSAs") throughout Michigan and Ohio. Consequently, New Par purchases interconnection directly from the following local exchange carriers ("LECs"): (1) Michigan Bell (Ameritech) and GTE North in Michigan, and (2) Ohio Bell (Ameritech), ALLTEL, GTE North, Cincinnati Bell, and United Telephone in Ohio. (New Par also is indirectly interconnected through these LECs to numerous independent LECs within each State.) These LECs continuously have imposed excessive interconnection rates on New Par. Moreover, they have refused to provide New Par with mutual compensation. Therefore, New Par has a significant interest in the Commission's proposals for regulating interconnection between LECs and commercial mobile radio service ("CMRS") providers.

New Par supports the adoption of a "bill and keep" requirement as both the Commission's interim *and* long term LEC-CMRS interconnection rate policy for LEC end office switching and terminating access between LEC end offices (or equivalent CMRS facilities) and end users. For dedicated transport, tandem switching, and common transport between CMRS networks and LEC end offices, the Commission

should mandate that rates be based on the long run incremental cost ("LRIC") of such interconnection.³

As the Commission recognized in its *Supplemental NPRM*, the Telecommunications Act of 1996 (the "1996 Act"), adopted after the release of the *NPRM*, affects many of the issues in this proceeding. For example, the 1996 Act affirms the Commission's tentative conclusion that it has the authority to regulate interstate and intrastate LEC-CMRS interconnection rates and to adopt its proposed bill and keep and LRIC-based rate structure therefor. At the same time, however, the 1996 Act prohibits the Commission from conducting rate regulation proceedings to establish with particularity the LECs' additional costs of transporting and terminating traffic from CMRS networks and preempts or dictates the outcome of certain of the Commission's other proposals.

³ New Par's discussion of LEC conduct and the requirements that should apply to LECs primarily refers to "incumbent local exchange carriers," as that term is defined in the Telecommunications Act of 1996. 47 U.S.C. § 251(h). Because of their dominant market power, incumbent LECs have been able to impose unreasonable interconnection terms on CMRS providers. Nevertheless, the Commission should extend all interconnection requirements (including bill and keep, LRIC-based compensation, non-discrimination, and public disclosure) to all local telephone service providers in order to ensure that they likewise negotiate reasonable and mutual compensation arrangements with CMRS providers with which they connect.

II. COMPENSATION FOR INTERCONNECTED TRAFFIC BETWEEN LECS' AND CMRS PROVIDERS' NETWORKS

A. Compensation Arrangements

1. Existing Compensation Arrangements

The Commission requests comment on the terms and conditions of existing LEC-CMRS interconnection arrangements and, in particular, the extent to which its mutual compensation requirement is not being observed in the marketplace.⁴ In New Par's experience, LECs have consistently failed to negotiate in good faith to reach equitable interconnection agreements. Consequently, not one of New Par's interconnection arrangements with a LEC has ever provided for mutual compensation.⁵

In Michigan, LEC-CMRS interconnection rates are based on interexchange carrier ("IXC") tariffed access charges, including the transport interconnection charge ("TIC") and approximately 30% of the carrier common line charge

⁴ *NPRM* at ¶¶ 41, 81. The Commission also requests comment on whether it should institute a procedure or mechanism to ensure that LECs comply with its existing rules, including mutual compensation. *Id.* at ¶ 81.

⁵ One LEC discounts New Par's dedicated transport rates to reflect the percentage of traffic carried therein that is actually land-to-mobile traffic. While New Par does not have to pay this LEC for land-to-mobile traffic, nor does the LEC compensate New Par for its cost of terminating such land-to-mobile traffic through New Par's switch. Thus, New Par is not receiving mutual compensation under this arrangement.

("CCLC"). As a result, Michigan CMRS providers pay, on average, about 2¢ per minute for interconnection and receive no mutual compensation. In comparison, under the recently enacted Michigan Telecommunications Act, new entrant competitive access providers ("CAPs") pay an interim rate of 1.5¢ per minute pending the Michigan Public Service Commission's consideration of the appropriate LEC LRIC-based interconnection rates. Moreover, the Michigan Telecommunications Act requires that new entrant CAPs receive mutual compensation from the LECs for interconnection services.

In Ohio, LEC-CMRS interconnection rates are established by contract and are, on average, comparable to those in Michigan.⁶ New Par has entered into agreements with several LECs, none of which have agreed to provide mutual compensation. In fact, one LEC told New Par (prior to the enactment of the 1996 Act) that it had no intention of providing CMRS providers with mutual compensation. New Par's interconnection arrangements in Ohio and Michigan apply both to intrastate and interstate traffic.

New Par's experience, like that of most other CMRS providers, demonstrates that LECs have blatantly disregarded the Commission's mutual compensation requirement. Rather than engaging in good faith negotiations, as the Commission

⁶ These rates are excessive when compared to the LECs' LRIC of providing the applicable interconnection services. For example, the rates include between 1.2¢ and 1.7¢ per minute for end office switching and local termination. *See, e.g., infra* n.33.

requires,⁷ LECs have consistently abused their dominant market power and forced New Par to enter into unfair interconnection arrangements. The LECs' excessive interconnection charges and failure to provide mutual compensation for interconnection have cost New Par millions of dollars over the past several years. Therefore, consistent with the requirements of the 1996 Act, the Commission should implement a more appropriate rate structure to ensure that New Par and other CMRS providers receive reasonably priced interconnection and mutual compensation.⁸ Specifically, as set forth in the following section, New Par strongly supports the Commission's proposed (1) bill and keep rate structure for LEC end office switching and terminating access between LEC end offices (or equivalent CMRS facilities) and end users and (2) LRIC-based rate structure for dedicated transport, tandem switching, and common transport between CMRS networks and LEC end offices.

⁷ See The Need to Promote Competition and Efficient Use of Spectrum for Radio Common Carrier Services, *Declaratory Ruling*, 2 FCC Rcd 2910, 2916 (1987) ("*Declaratory Ruling*") ("[T]he terms and conditions of cellular interconnection must be negotiated in good faith."); see also Implementation of Sections 3(n) and 332 of the Communications Act, *Second Report and Order*, 9 FCC Rcd 1411, 1497 (1994) ("*Second Report and Order*").

⁸ The Commission also should adopt rules requiring LECs to reimburse CMRS providers for any demonstrable overcharges for a set period of time (e.g., two years). The enforcement mechanism for such rules can be established at either the Commission or State commission level.

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2. General Pricing Principles

New Par concurs with the Commission's conclusions that (1) interconnection rates should be based on the LRIC of providing the respective termination services⁹ and (2) the Commission's interconnection rate structure should provide for cost recovery based on the nature of the facilities.¹⁰

For dedicated transport, tandem switching, and common transport between CMRS networks and LEC end offices, the providers of bottleneck facilities (*e.g.*, incumbent LECs) should have the burden of demonstrating the LRIC of providing such switching and transport. Further, the Commission should establish a ceiling on the interconnection rates charged to CMRS providers that is equal to the lowest interconnection rate offered to a CAP or new entrant LEC (or where there is no such entity, a rate equal to the rate charged to other LECs on the date the *NPRM* was released).

Additionally, for end office switching and terminating access between LEC end offices and LEC end users, and likewise between CMRS switching centers and associated CMRS subscribers, the Commission should mandate bill and keep as the

⁹ *NPRM* at ¶ 47.

¹⁰ *Id.* at ¶ 42.

method of cost recovery. As discussed further below, bill and keep is an administratively efficient means of producing LRIC-based interconnection rates.

The Commission requests comment on whether it should adopt a procedure for identifying and allocating the full cost of interconnection services, including shared costs and overhead.¹¹ Any inclination the Commission may have had to identify such shared costs and overhead is now foreclosed by the enactment of the 1996 Act, which prohibits the Commission or the States from conducting "any rate regulation proceeding to establish with particularity the additional costs of transporting or terminating calls."¹² In the *NPRM*, the Commission acknowledged that the full allocation of overhead and shared costs of interconnection likely would require lengthy, contentious proceedings, which is precisely what Section 252(d)(2)(B)(ii) of the 1996 Act seeks to avoid.¹³ Thus, the Commission may provide for the recovery only of LRIC-based rates, as provided in the statute.

Bill and keep, on the other hand, is consistent with the 1996 Act because it allows both parties to recover the LRIC of terminating traffic without necessitating

¹¹ *Id.* at ¶ 51.

¹² 47 U.S.C. § 252(d)(2)(B)(ii).

¹³ The Commission noted that there are "theoretical and practical problems associated with recovering these shared costs and overheads." *NPRM* at ¶ 46.

any negotiations or proceedings.¹⁴ Likewise, with respect to dedicated transport, tandem switching, and common transport between CMRS networks and LEC end offices, the Commission can require the LECs to demonstrate the specific LRIC of providing such interconnection services to the CMRS provider, as the statute authorizes, without conducting a protracted proceeding. Further, by implementing bill and keep and limiting the LECs' recovery to LRIC-based interconnection rates, the Commission would prevent LECs from exacting excessive rates and passing through the costs of any potential LEC mismanagement to CMRS providers.

¹⁴ See *infra* part II(A)(3)(a). Moreover, the 1996 Act explicitly authorizes the use of bill and keep arrangements. 47 U.S.C. § 252(d)(2)(B)(i).

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3. Pricing Proposals (Interim, Long Term, Symmetrical)

- a. *The Commission Should Adopt Bill and Keep as its Interim and Long Term Rate Policy for End Office Switching and Local Termination.*

New Par fully concurs with the Commission's tentative conclusion to adopt bill and keep as an interim interconnection rate policy for LEC end office and mobile telephone switching office ("MTSO") switching and termination to end users. Further, since the factors and principles that support bill and keep equally justify the policy's permanent implementation, New Par supports the adoption of bill and keep as the Commission's long term policy as well. The 1996 Act explicitly authorizes the use of "arrangements that afford the mutual recovery of costs through the offsetting of reciprocal obligations, including arrangements that waive mutual recovery (such as bill-and-keep arrangements)."¹⁵ Moreover, as demonstrated below, bill and keep is consistent with the interconnection pricing principles articulated in the Commission's *NPRM*.

First, bill and keep ensures that LECs carry out their statutory obligation to provide reciprocal compensation to CMRS providers for interconnection.¹⁶ Although the Commission currently requires LECs to offer CMRS providers interconnection

¹⁵ 47 U.S.C. § 252(d)(2)(B)(i).

¹⁶ 47 U.S.C. § 251(b)(5).

under the principle of mutual compensation,¹⁷ LECs have blatantly disregarded this mandate. In the *NPRM*, the Commission acknowledged possible widespread violations of its mutual compensation requirement and suggested that additional remedies might be needed to ensure that LECs comply with its existing rules.¹⁸ The 1996 Act elevates this CMRS right of mutual compensation to a statutory requirement and imposes a statutory obligation on the Commission to implement a more effective rate structure, consistent with the principle of mutual compensation.¹⁹ Bill and keep is the most effective means to ensure the LECs' compliance with Congress's mutual compensation requirement.

Second, bill and keep prevents LECs from charging unreasonably high rates for local switching, thereby protecting CMRS providers from having to overpay for LEC termination services. Thus, bill and keep affords CMRS providers true co-carrier status²⁰ and reverses the longstanding practice of one-sided interconnection arrangements that favor incumbent LECs at the expense of their wireless competitors.

¹⁷ *Declaratory Ruling*, 2 FCC Rcd at 2915; *Second Report and Order*, 9 FCC Rcd at 1498.

¹⁸ *NPRM* at ¶ 81. As discussed above, in New Par's experience, LECs have consistently failed to negotiate in good faith and provide reasonable and mutual compensation for interconnection services. *See supra* part II(A)(1).

¹⁹ 47 U.S.C. §§ 251(b)(5), 251(d)(1).

²⁰ *Declaratory Ruling*, 2 FCC Rcd at 2916 (cellular carriers are entitled as co-carriers to the same interconnection compensation arrangements that exist between LECs).

Third, cost studies have shown that the LRIC of providing interconnection, particularly end office switching and local termination, is near zero for LEC off-peak traffic.²¹ Cellular traffic peak usage hours do not correspond to the typical peak usage period for LECs. Specifically, New Par's peak hours generally are weekdays from 4:00 to 5:00 p.m., and secondarily from 3:00 to 4:00 p.m. and 5:00 to 6:00 p.m. (*i.e.*, the "shoulder" hours). LEC peak hours, on the other hand, typically would appear to be weekdays from 10:00 to 11:00 a.m. and 2:00 to 3:00 p.m. in predominantly business markets and 7:00 to 9:00 p.m. in predominantly residential markets. Because most mobile-to-land traffic occurs during LEC non-peak hours, the LEC's LRIC of providing interconnection to CMRS providers is *de minimis*, regardless of whether traffic volumes are equal in both directions. Consequently, bill and keep reasonably approximates the additional cost (*i.e.*, the LRIC) to the LECs of terminating traffic that originates on CMRS networks.²²

Fourth, bill and keep will produce significant administrative cost savings for both LECs and CMRS providers by eliminating the need for lengthy negotiations,

²¹ See Gerald W. Brock, "Incremental Cost of Local Usage," at 3-5 (Mar. 16, 1995) ("Brock Study"); see also *NPRM* at ¶ 44 ("[O]ff peak traffic imposes relatively little additional cost because it does not require any incremental capacity to be added . . .").

²² 47 U.S.C. § 252(d)(2)(A)(ii). To the extent the LRIC to the LECs of providing interconnection is near zero, the Commission also would be justified in extending bill and keep to tandem switching and common transport between LEC tandem switches and LEC end offices.

detailed reporting requirements, and interconnection billing. In the *NPRM*, the Commission noted that methodologies for identifying the particular costs of interconnection often require contentious and time-consuming proceedings due to the "complex issues" that must be resolved.²³ New Par has experienced this first-hand -- it has expended tens of thousands of dollars and countless hours engaged in one-sided "negotiations" with the LECs regarding interconnection rates. Despite New Par's efforts, LECs generally have adopted a "take it or leave it" approach in setting the rates, terms, and conditions of interconnection.

For all of the foregoing reasons, bill and keep serves the public interest by facilitating the growth and development of CMRS as a viable competitor to landline local exchange service. By relieving CMRS providers from the burden of overpayments for terminating traffic on LEC networks and allowing for mutual compensation, bill and keep arrangements encourage the growth of the CMRS industry and promote competition with LEC-provided services.²⁴ For instance, with such savings New Par could introduce new services or implement various system enhancements, such as additional cells for greater area coverage and calling capacity or the expansion of digital service availability.

²³ *NPRM* at ¶ 57.

²⁴ *Id.* at ¶ 2; *see also Second Report and Order*, 9 FCC Rcd at 1420 (finding that the imposition of LEC interconnection obligations "will promote competition, job creation and economic growth").

The Internet is the primary model of a network that successfully utilizes a bill and keep method of interconnection compensation. Even though each Internet user is responsible for the cost of establishing and maintaining its own connection to the Internet, the Internet has experienced phenomenal growth in recent years. The number of distinct networks linked to the Internet has grown from fewer than 5,000 in 1981 to more than 45,000 in 1995, and the number of Internet users has grown from about 1.6 million in 1989 to almost 50 million in 1995.²⁵ The success of the Internet demonstrates that bill and keep can effectively compensate interconnection providers and stimulate the growth of interconnected networks.

If the Commission is not ready to adopt bill and keep as its long term policy, then it should at least adopt bill and keep as its interim approach pending the LECs' documentation of the LRIC of providing interconnection.²⁶ This would prevent LECs from continuing to overcharge CMRS providers for interconnection until the Commission implements its long term approach. Moreover, because of the LECs' past

²⁵ Mike Snider, *Growth Spurt Causes Traffic Tie-Up on Internet*, USA Today, Mar. 22, 1995, at D6.

²⁶ *NPRM* at ¶ 75. In addition, if the Commission adopts a LRIC-based rate structure for end office switching and local termination, then it should provide for geographic and time-of-day deaveraging of such rates so that CMRS providers do not overpay for interconnection. *See infra* part II(A)(3)(c).

actions, as well as long-standing Commission precedent,²⁷ the LECs should bear the burden of documenting the LRIC of interconnection.²⁸ Finally, under these circumstances, the Commission should mandate bill and keep for an extended period of time in order to offset prior LEC overcharges for interconnection.²⁹

b. Implementation of the Commission's Bill and Keep Proposal.

New Par concurs with the Commission's tentative conclusion that bill and keep should apply both to LEC peak and off-peak periods.³⁰ As noted in the *NPRM*, there are practical problems in implementing a peak-sensitive pricing system when different networks experience peak traffic volumes at different times.³¹ In the

²⁷ See, e.g., *Declaratory Ruling*, 2 FCC Rcd at 2915; *Second Report and Order*, 9 FCC Rcd at 1498.

²⁸ In the *NPRM*, the Commission requests comment on a number of alternative interconnection rate structures. See generally *NPRM* at ¶¶ 66-75. Several of the Commission's alternative proposals are clearly unacceptable. For example, under no circumstances should a cellular carrier be subject to mandatory acceptance of an interconnection arrangement based on a LEC's post-*NPRM* agreement with another incumbent LEC or an agreement with a wireless carrier where such carrier is an affiliate of the LEC in question. In addition, as discussed further below, LEC-CMRS interconnection rates should not be based on IXC access charges unless such access charges are revised to accurately reflect the LRIC of interconnection.

²⁹ See *supra* n.8.

³⁰ *NPRM* at ¶ 62.

³¹ *Id.* at ¶ 45.

case of LEC and CMRS networks, the difference in peak usage periods means that the LEC costs of terminating CMRS traffic is *de minimis*, even during LEC peak periods. Consequently, the Commission need not limit bill and keep to off-peak periods.

Moreover, absent evidence to the contrary, the Commission should anticipate that CMRS peak usage will continue to occur during the hours listed above, regardless of the Commission's interconnection policy. One of the primary benefits of CMRS is that phones can be utilized whenever and wherever they are needed. Accordingly, it is unlikely that CMRS provider peak usage will shift in the foreseeable future so that it overlaps with LEC peak usage hours.

c. The Rate for Dedicated Transport, Tandem Switching, and Common Transport Should be Based on the Long Run Incremental Cost of Interconnection.

For dedicated transport, tandem switching, and common transport between CMRS networks and LEC end offices, the Commission should mandate LRIC-based interconnection rates. The 1996 Act prohibits the Commission and State commissions from conducting hearings to determine with particularity the fully allocated costs associated with interconnection.³² In the *NPRM*, the Commission discusses a number of proposals (*e.g.*, Ramsey approach and Baumol approach), but all of these proposals involve complex and cumbersome methodologies that contravene the requirements of the 1996 Act, as well as the Commission's objectives.

³² 47 U.S.C. § 252(d)(2)(B)(ii).

In order to ensure that CMRS providers do not pay more than LRIC-based rates for dedicated transport, tandem switching, and common transport in the specific markets which they serve, the Commission should provide for geographic and time-of-day deaveraging of interconnection rates.³³ As an additional safeguard against excessive and discriminatory rates, the Commission should impose a ceiling on LEC-CMRS interconnection rates so that CMRS providers do not pay more than the lowest rate charged to a CAP or new entrant LEC (or where there is no such entity, a rate equal to the rate charged to other LECs on the date the *NPRM* was released).

The Commission should clarify that CMRS providers may provide any dedicated facilities that are needed to interconnect with a LEC on their own or through third parties, rather than being forced to lease these facilities from the LEC. If a CMRS provider installs non-LEC dedicated facilities, then the LEC should be prohibited from charging excessive rates for other LEC-provided elements of interconnection. Further, the Commission should reiterate that all LEC interconnection charges must be

³³ Cost studies have shown that while the average local termination cost is 0.2 cents per minute, the cost varies from 2.1 cents during peak hours to almost zero during off-peak hours. Brock Study at 3-4. The traffic generated by CMRS provider networks is primarily during LEC off-peak periods, which means that CMRS providers would significantly overpay if LRIC costs were averaged. Moreover, in order to effectively implement time-of-day deaveraging, the Commission should require LECs to provide peak traffic flow information so they do not define peak hours inappropriately to include CMRS peak hours.

reasonable, based on the services the LEC actually provides, and limited to services the CMRS provider actually requests.³⁴

The Commission also asked whether interconnection rates for dedicated transport, tandem switching, and common transport between CMRS networks and LEC end offices should be based on IXC access charges as currently determined by LECs. New Par strongly opposes using IXC access charges as the basis for LEC-CMRS interconnection rates, even on an interim basis, because such access charges include fully distributed costs in addition to LRIC.³⁵ If, however, IXC access charges are reformed so that fully distributed costs and the CCLC and TIC are not included, then they could be useful as a model or ceiling for CMRS interconnection rates.³⁶

³⁴ For example, in Michigan, Type 2B connections are priced so high in comparison to Type 2A connections that it is not cost-effective for New Par to purchase any Type 2B connections. A rate structure that produces such an inefficient result is not reasonable.

³⁵ See, e.g., Local Exchange Carrier Switched Local Transport Restructure Tariffs, *Order*, 9 FCC Rcd 400, 402, (1993) (noting that the tandem switching charge element of IXC access tariffs "embodies fully distributed costs").

³⁶ See *NPRM* at ¶ 68. The TIC should not be applied to CMRS providers because it is a purely *interstate* access charge that is not designed to recover LEC interconnection costs. Rather, the sole purpose of the TIC was to ensure that LECs did not lose substantial amounts of revenue as a result of the Commission's interstate transport rate restructuring. See *Transport Rate Structure and Pricing, Fourth Memorandum Opinion and Order on Reconsideration*, 10 FCC Rcd 12979 (1995).

d. Symmetrical Compensation.

New Par concurs with the Commission's tentative conclusion that interconnection rates should be symmetrical between LECs and CMRS providers.³⁷ Bill and keep is, of course, a symmetrical compensation method. Nevertheless, even if the Commission does not mandate bill and keep to the extent proposed herein, it should at least mandate symmetrical compensation arrangements based on LEC rates. LECs should be able to achieve economies of scale that make their per-minute interconnection costs lower compared to the interconnection costs incurred by CMRS providers. At the same time, CMRS providers would benefit from a more efficient system of cost recovery.

The Commission also seeks comment on measures to ensure that a LEC pays a CMRS provider the same interconnection rates that the CMRS provider pays the LEC. To the extent the Commission, despite the statutory provisions and policy to the contrary, attempts to allocate the shared costs and overhead of interconnection facilities in excess of LRIC, it must require LECs to reimburse CMRS providers the same amounts for their own comparable overhead costs.

Finally, the Commission should not reconsider its prior decision to forbear from regulating the rates that CMRS providers charge to their subscribers for

³⁷ *NPRM* at ¶ 78.

wireless services.³⁸ Those rates are distinct from the interconnection rates at issue in this proceeding, as the Commission itself has recognized.³⁹ Thus, the Commission can -- and should -- continue to forbear from regulating rates charged to CMRS subscribers as opposed to interconnecting carriers.

³⁸ *Id.* at ¶ 80.

³⁹ *Cf.* Petition of the State of Ohio for Authority to Continue to Regulate Commercial Mobile Radio Services, 10 FCC Rcd 7842, 7853 (1995).

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B. Implementation of Compensation Arrangements

1. Negotiations and Tariffing

New Par supports the Commission's tentative conclusion that information about LEC-CMRS interconnection compensation arrangements should be made publicly available.⁴⁰ The 1996 Act requires that all interconnection arrangements with incumbent LECs be made "available for public inspection" within 10 days after the agreement is approved by a State commission.⁴¹ The Commission should extend this public disclosure requirement to all LEC-CMRS interconnection compensation arrangements to ensure that LECs fulfill their statutory obligation to provide non-discriminatory, reciprocal compensation for interconnection.⁴² At the same time, the Commission

⁴⁰ *NPRM* at ¶ 95. New Par has been unable to obtain a copy of any negotiated LEC-LEC interconnection agreement in Ohio. Because of the LECs' reluctance to disclose, the burden should be on them to demonstrate that they are not unreasonably discriminating against CMRS providers. The first step in such a process must be full disclosure.

⁴¹ 47 U.S.C. § 252(h).

⁴² *See* 47 U.S.C. § 251(b)(5).